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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No.: BK NO. 09-11901
)	
OCEANA R STUART)	Chapter 7
)	
)	MOTION FOR SANCTIONS FOR
)	CONTEMPT FOR VIOLATION OF
Debtor)	DISCHARGE INJUNCTION AND COURT
)	ORDER
)	
)	Date: March, 26, 2010
)	Time: 10:00 a.m.
)	Courtroom: Santa Rosa Bankruptcy Court
)	
)	

TO EMC MORTGAGE CORPORATION AND ALL INTERESTED PARTIES:

Debtor Oceana R Stuart will move the United States Bankruptcy Court located at 99 South E Street, Santa Rosa, California 95404, on March 26, 2010 at 9: 00 a.m. for a determination that creditor EMC Mortgage Corporation is in contempt of Court for having violated and disregarded the terms of 11 U.S.C. §524, the discharge injunction, by attempting through its agent, National Default Servicing Corporation, to collect and recover a debt from her personally, which claim was discharged under 11 U.S.C. §727 and also violated the Relief From Stay Order of the above-entitled Court dated December 16, 2009 by the same conduct. Debtor will also move the Court for an order against EMC Mortgage Corporation requiring it to pay

1 damages and monetary sanctions in the sum of \$5,000.00 plus actual attorneys fees, according to
2 proof.

3 This motion is based on the fact that after debtor received a discharge in her Chapter 7
4 bankruptcy October 6, 2009, creditor EMC Mortgage Corporation, a secured creditor entitled to
5 enforce its lien against it's collateral only, the debtor's residence, with notice of the discharge,
6 knowingly attempted to collect its claim against the debtor personally as well as enforcing its
7 lien against the property. Furthermore, the creditor had knowledge of the Court Order For Relief
8 From Stay in this action dated December 16, 2009, at paragraph 7, prohibiting threatening to
9 enforce personal liability against the debtor.
10

11 The above stated acts of the creditor and its agent have upset, distressed, and bothered Ms.
12 Stuart causing her worry and concern as to her discharge and future income as well as resulting
13 in her incurring attorney's fees and costs. The above-stated acts were intentional, willful, and
14 knowing violations of the permanent injunction and said Order of the Court in this case.

15 This Court has jurisdiction over this motion pursuant to 28 U.S.C. §1334 and 28 U. S. C.
16 §157 and this motion is made under 11 U.S.C. §105, §524 and §727 and Bankruptcy Rule 9014.
17

18 This motion is based on the facts and legal grounds set forth herein, in the notice of motion,
19 in the files, pleadings, and documents filed in this case, in the declaration of debtor and debtor's
20 counsel Douglas Van Vlear filed with this motion, and upon such evidence that should be
21 presented at any hearing on this motion.
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23 Debtor Oceana R Stuart prays for an order against EMC Mortgage Corporation finding that it
24 is in contempt for having violated and disregarded the terms of 11 U.S.C. §524, the discharge
25 injunction, and the Order of the Court in this action dated December 16, 2010. Debtor also

1 moves the Court for an order against said creditor for damages in the sum of \$5,000, for her
2 attorney's fees, in the amount determined by the Court according to proof at the time of the
3 hearing on this motion and for any other relief that the Court deem just and necessary.
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5 Dated: February 17, 2010

6 /s/ Douglas H Van Vlear
7 DOUGLAS H. VAN VLEAR
8 Attorney for Debtor
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